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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: Silva-Craig et al.

Application No.: 09/681,471

Filed: April 13, 2001

For: Application Service Provider Based
Redundant Archive Services for
Medical Archives and/or
Imaging Systems

Examiner: Baoquoc N. To

Attorney Docket No. 15-IS-5715
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Trademark Office (FAX No. (571) 273-8300),
on October 19, 2006.
Christopher R. Carroll, Reg. No. 52,700PRE-APPEAL BRIEF REQUEST FOR REVIEWMail Stop After Final
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The Applicant requests review of the final rejection in U.S. Patent Application Serial No. 09/681,471, filed April 13, 2001 and titled "Application Service Provider Based Redundant Archive Services for Medical Archives and/or Imaging Systems." No amendments are being filed with this request. This request is filed with a Notice of Appeal.

The pending application has undergone considerable prosecution. For example, at least six office actions (*see* 10/23/02, 5/23/03, 9/29/03, 9/22/04, 12/14/05 and 6/13/06 Office Actions), seven amendments (*see* 3/12/03, 7/9/03, 12/29/03, 11/22/04, 3/10/06, 8/12/06 and 8/31/06 Amendments), three advisory actions (*see* 7/23/04, 2/9/05, 8/24/06 and 9/19/06 Advisory Actions), one RCE (*see* 8/25/03 RCE) and one appeal brief (*see* 8/5/05 Appeal Brief) have already been filed in the prosecution

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of this application. The previous appeal brief did not reach a decision on the merits as prosecution was reopened by the Examiner. (*See* 12/14/05 Office Action, p. 2.)

The present application includes claims 1-8, 11-20, 23-36 and 53-54, all of which were finally rejected in the Final Office Action mailed June 13, 2006. In the Final Office Action, the Examiner rejected the pending claims under 35 U.S.C. § 103(a) in view of the various patents and a patent application. For the sake of brevity, the Applicant will discuss only the rejection of the three independent claims in this Brief (claims 1, 15 and 25). However, the Applicant maintains its arguments with respect to the rejection of all other claims and does not waive any arguments for purposes of its appeal. (*See, e.g.*, 8/31/06 Amendment, pp. 16-20, 22-23, 30-41.) The Examiner's final rejection of each of the above claims is improper as the Examiner has failed to establish that each recited element in the pending claims taught or suggested by any of the above references whether considered alone or in combination. *See* 35 U.S.C. § 103(a).

In the Final Office Action and subsequent Advisory Actions, the Examiner incorrectly maintains that each of Rothschild, Kumagai and Sameshima discloses a status monitor that (a) monitors operations occurring at a data source and (b) triggers an archive request once data is obtained by the data source, where the data is transmitted from the data source to the remote data store once the archive request is triggered by the status monitor, as recited in claim 1. None of these patents teaches or suggests such a status monitor. (*See id.*, pp. 12-16.) Instead, each of these patents are limited to describing a device or software structure that monitors events occurring internally and not at a data source, as described below.

For example, workstation 20 of Rothschild (relied upon by the Examiner in his argument that Rothschild teaches a "status monitor") does not monitor operations at any other device. (*Id.*, pp. 12-

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13.) Workstation 20 only saves the data locally before sending the data to the central data management system 30 without monitoring any other device or component of the disclosed system. (*Id.*)

Kumagai does not disclose any device or software structure that monitors anything. (*Id.*, pp. 13-14.) That is, the Examiner has failed to find any teaching or suggestion in Kumagai of anything that monitors operations occurring at a data source or that triggers an archive request. (*Id.*) Rather, the Examiner argues that as "most medical data is collected at irregular intervals . . . and . . . stored . . . in databases," Kumagai must disclose the recited status monitor. (9/19/06 Advisory Action, p. 2.) The Examiner, however, has not provided any support for this argument. Accordingly, Kumagai does not disclose any status monitor.

Finally, the Examiner incorrectly contends that Sameshima discloses the recited "status monitor" because of a disclosed status control table 234. (8/31/06 Amendment, pp. 14-16.) However, the table 234 relied upon by the Examiner is a software structure that only monitors internal operations occurring at the processing device that includes the table 234. (*Id.*) In sum, the Examiner has failed to establish that any of the patents relied upon in the rejection of independent claim 1 teach or suggest the "status monitor" that monitors operations occurring at a data source as recited in claim 1.

In the Final Office Action, the Examiner incorrectly maintains that Rothschild and Drexler each discloses a status monitor that (1) automatically detects an error in medical data at a data source by detecting at least one of data loss, data corruption, and a failure of a medical data storage system and (2) instructs a centralized remote data store to transmit data to the data source in order to restore the medical data that includes the error, as recited in claim 15. Once again, neither of these references teaches or suggests such a status monitor.

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First, as described above, Rothschild does not disclose any status monitor that monitors or detects events or data at some other device. (*Id.*, pp. 12-13.) Rather, Rothschild only discloses a workstation 20 that internally monitors events. (*Id.*)

Second, Drexler is unavailable as a prior art reference as it is nonanalogous art. (*See id.*, pp. 25-27.) The Applicant made this argument in the 9/13/06 Amendment but did not receive a response from the Examiner. (*See* 8/24/06 and 9/19/06 Advisory Actions.) As previously set forth, Drexler is neither (1) in the field of the applicant's endeavor or (2) reasonably pertinent to the problem with which the application is concerned, as required by MPEP § 2141.01(a). (8/31/06 Amendment, pp. 25-27.)

Even if Drexler were somehow considered analogous art, it is limited to describing systems used to compensate for the loss of data spots on an optical memory card. (*Id.*, pp. 28-29.) However, no automatic error detection or instructions are performed by the systems or the memory card in Drexler. (*Id.*) In sum, the Examiner has failed to establish that either one of these patents discloses the recited "status monitor" of claim 15.

With regard to claim 25, none of Rothschild, Sameshima and Parvulescu teaches or suggests detecting the obtaining of medical data at a data source and transferring the medical data from the source to a centralized remote data store based on a trigger produced by a status monitor, as recited in claim 25. As described above, neither Rothschild and Sameshima does not disclose detecting when medical data is obtained and transferring the medical data from a data source to a centralized remote data store based on a trigger produced by a status monitor. (*See also id.*, pp. 12-16, 37-38.)

Parvulescu merely describes an archiving device 100 that receives an analog signal from a image capture device 204 and stores the image in digital form on an internal hard drive. (*Id.*, pp. 35-

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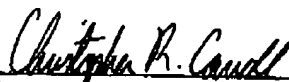
37.) There is no teaching or suggestion of any production of a trigger to cause medical data to be transferred from a source to a remote data store, as recited in claim 25. (*Id.*) In addition, there is no disclosure of transferring data to a centralized remote data store, also as recited in claim 25. (*Id.*) In sum, none of the patents relied upon by the Examiner teaches or suggests the "transferring" or production of a "trigger," as recited in claim 25.

The Examiner has failed to establish that each of the elements recited in the pending independent claims 1, 15 and 25 are taught or suggested by any reference or combination of references. The remaining rejections of the pending dependent claims also fail to establish that each and every element is taught or suggested by the reference(s) relied upon by the Examiner, as set forth in the 6/13/06 Amendment. While the Applicant does not repeat those differences here, the Applicant maintains its arguments with respect to the rejections not addressed here for the purposes of its appeal. Accordingly, the Applicant respectfully submits that the final rejection of all pending claims in this application should be withdrawn and the claims should be allowed.

The Commissioner is authorized to charge any necessary fees, including the \$500 fee for the Notice of Appeal, or credit any overpayment to the Deposit Account of GEMSIT, Account No. 50-2401.

Respectfully submitted,

Date: October 19, 2006


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